

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting Efficient Use of Spectrum)	WT Docket No. 00-230
Through Elimination of Barriers to the)	
Development of Secondary Markets)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits comments in response to the Commission’s October 6, 2003, Further Notice of Proposed Rulemaking (“*Further Notice*”),² requesting comment on further policy and rule changes to facilitate the development of secondary markets in spectrum usage rights.

As noted in previous comments, CTIA supports the Commission’s continuing efforts to develop secondary markets in spectrum usage rights, and believes that the general proposals outlined in the *Further Notice* will help ensure that limited spectrum resources are used in the most economically efficient manner. Specifically, CTIA supports the Commission’s proposal to forbear from prior review and approval of certain categories of spectrum leases that involve a transfer of *de facto* control to the lessee, as well as the Commission’s proposal to forbear from requiring prior approval of certain transfers and assignments that do not raise public interest issues. In addition, CTIA

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-230, FCC 03-113 (rel. Oct. 6, 2003) (hereinafter “Report and Order” or “Further Notice”).

generally supports the Commission’s proposal to expand spectrum leasing policies to services not within the scope of the changes already announced, so long as these policies are tailored to avoid inefficient use of spectrum by governmental entities. Finally, CTIA believes that information sharing will play an important role in the development of new secondary markets. This function, however, is best addressed by the private sector, and will naturally develop as market conditions dictate. Accordingly, CTIA does not believe a Commission role in information sharing is necessary at this time.

I. The Commission Should Forbear From Prior Commission Approval of Certain Categories of Spectrum Leases

The *Further Notice* seeks comment on a proposal to “forbear from individual prior review and approval by the Commission for certain categories of leasing arrangements involving a transfer of de facto control that would not raise any public interest concerns.”³ Under the specific terms of this proposal, lessees would not be subject to the Commission’s current rules requiring 30 days prior notice and Commission review and consent. Instead, lessees would be required to file a notification with the Commission within 14 days of the execution of the lease certifying that the lessee meets “applicable eligibility and use restrictions associated with the leased spectrum.”⁴

CTIA supports this proposal, and urges the Commission to streamline the notification process as much as possible by allowing parties entering into such a lease arrangement to file an electronic notification certifying that they meet the Commission’s eligibility and use restrictions. Furthermore, CTIA believes that this proposal squarely comports with both the spirit and the letter of Section 10. As the *Further Notice* states,

³ Further Notice at ¶ 244.

⁴ Further Notice at ¶ 247.

the forbearance process for certain spectrum leases is intended to “enable parties to a spectrum lease to put their business plans into effect with reduced regulatory delay and transaction costs.”⁵ As CTIA has previously noted, the wireless sector is the most intensely competitive sector of the telecommunications industry – due in large part to the absence of heavy-handed regulation. Forbearing from requiring prior approval for spectrum leases will allow wireless carriers to more efficiently utilize spectrum, and continue to bring consumers innovative products at competitive prices. Accordingly, CTIA urges the Commission to adopt the spectrum leasing forbearance proposal.

II. The Commission Should Forbear From Prior Commission Approval of Certain Categories of Transfers and Assignments

The *Further Notice* also requests comment on “whether to use our forbearance authority to permit certain transfers of control and assignment of licenses to proceed without prior individualized Commission review and consent” based on criteria similar to that proposed for “use in the leasing context.”⁶ CTIA agrees with the Commission that the Commission should exercise forbearance with regard to certain transfers and assignments in order to avoid market distortions favoring spectrum leases and promote efficient secondary markets.

In formulating a forbearance policy for spectrum transfers and assignments, CTIA encourages the Commission to provide as much flexibility as possible to ensure that transfers and assignments become an effective segment of any secondary market. Furthermore, CTIA urges the Commission to harmonize any notification procedure

⁵ Further Notice at ¶ 273.

⁶ Further Notice at ¶ 278.

utilized in conjunction with spectrum transfers and assignments to ensure that it closely comports with the notification procedure utilized for spectrum leases.

III. The Commission Should Extend Its Spectrum Leasing Policies to Additional Spectrum-Based Services With Certain Safeguards

The *Further Notice* also requests comment on a proposal to extend the Commission's leasing policies adopted in the *Report and Order* to include additional spectrum-based services.⁷ CTIA generally supports this concept, and believes that it will lead to the creation of effective secondary markets in all spectrum-based services.

However, if the Commission expands the leasing policies to allow Public Safety or other public sector licensees to lease spectrum to commercial entities, CTIA urges the Commission to take care to ensure that its policies do not encourage “warehousing” or inefficient use of spectrum by public sector entities. Unlike commercial entities, public sector entities do not face private sector market forces, and have little incentive to actually disaggregate or transfer spectrum to parties that will use that spectrum more efficiently. In fact, expansion of the leasing program to Public Safety Radio Services may actually encourage Public Safety users to retain spectrum they do not need – in the hopes of leasing it in some point in the future – rather than allowing the spectrum to be reallocated to other more efficient users.

Accordingly, CTIA urges the Commission to consider certain alternatives to merely extending the leasing rules to the Public Safety Radio Service. One possible

⁷ Further Notice at ¶ 288 (noting that the Report and Order did not extend “leasing to certain other Wireless Radio Services, including Public Safety Radio Services (Part 90), Guard Band Manager Service (Part 27, Subpart G), Maritime Services (Part 80), Aviation Services (Part 87), Personal Radio Services (Part 95) (other than 218-219 MHz Service), Amateur Radio Service (Part 97), and Experimental Radio, Auxiliary, Special Broadcast, and other Program Distributional Services (Part 74), as well as shared frequencies licensed under our Wireless Radio Service rules”).

alternative would be to relocate certain Public Safety uses to other spectrum, auction the spectrum made available, and then place the proceeds in a “Public Safety Fund” to pay for the relocation *and* improving Public Safety interoperability and other operational capabilities.⁸ Such a program would not only provide money for upgraded Public Safety equipment and capabilities, but would also increase the efficient use of all spectrum in the Public Safety bands.

IV. The Commission Should Facilitate Access to Spectrum for New Technologies Through the Use of Secondary Markets, Rather Than Unlicensed Underlays

Both the *Spectrum Policy Task Force Report* and the *Further Notice* explore various technological advances that may make it possible to use spectrum more intensively and efficiently. To that end, the *Further Notice* requests comment on a variety of possible mechanisms for expanding spectrum access for new technologies, such as “opportunistic devices” that can operate intermittently in temporarily unused spectrum.⁹

Consistent with its earlier comments, CTIA believes that access to licensed spectrum by third parties utilizing new technologies is best implemented through a secondary markets approach, rather than through an unlicensed underlay approach. The authorization of unlicensed underlay operations in licensed spectrum not only raises significant issues related to the potential for interference, but also creates disincentives for innovation and new service offerings. Given the current lack of rules or policies

⁸ The creation of such a fund would ensure that any proceeds received from the auction of Public Safety spectrum are used exclusively to upgrade Public Safety capability. This approach would likely require legislation, but a fund relating to the relocation of U.S. Government users in other contexts is currently being actively considered in Congress.

⁹ Further Notice at ¶¶ 233-234.

governing acceptable interference thresholds for opportunistic devices, CTIA believes that the only prudent course of action at this time is to allow licensees to control secondary market rights to their spectrum in order to ensure that opportunistic devices and other new technologies or uses do not create interference issues. This approach will, moreover, promote the most efficient use of spectrum in these bands because licensed users subject to intense market pressures will have significant incentives to use their spectrum as efficiently as possible.

V. Development of Information-Sharing Mechanisms Should Be Left to the Private Sector

Finally, the *Further Notice* requests comment on “whether and to what extent the Commission should support or encourage the establishment of additional information services” for secondary markets in spectrum.¹⁰ CTIA continues to agree with the Commission’s tentative conclusion in the *Secondary Markets NPRM* that “the private sector is better suited both to determine what types of information parties might demand, and to develop and maintain information on the licensed spectrum that might be available for use by third parties.”¹¹ Accordingly, CTIA urges the Commission to let the market develop its own information sharing mechanisms at this time.

¹⁰ Further Notice at ¶ 226.

¹¹ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Notice of Proposed Rulemaking*, 15 FCC Rcd 24203, ¶ 100 (2000).

CONCLUSION

CTIA commends the Commission for its continued work towards the development of effective secondary markets for spectrum, and urges the Commission to adopt the recommendations set forth in these comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christine Blomquist, hereby certify that on this 5th day of December 2003, the foregoing Comments of the Cellular Telecommunications & Internet Association were filed electronically on the FCC's Electronic Comment Filing System and copies were served via email or first class mail to the following:

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